

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 19th day
of April, 2005.

In the Matter of the Application of Computer Network)
Technology Corporation for Authority to Enter Into a)
Merger and Transfer of Control Transaction with)
Condor Acquisition, Inc., and McDATA Corporation,)
and Their Respective Subsidiaries.)

Case No. XM-2005-0283

**ORDER APPROVING MERGER
ON REHEARING**

Syllabus:

This order approves the merger of Computer Network Technology Corporation into Condor Acquisition, Inc., a wholly-owned subsidiary of McDATA Corporation, and deletes a condition included in the original order.

The Transaction:

On February 18, 2005, Computer Network Technology Corporation ("CNT") filed its Application for authority to enter into a merger and transfer of control transaction with Condor Acquisition, Inc., and McDATA Corporation. CNT is a publicly-traded Minnesota corporation in good standing that is duly authorized to operate in Missouri. CNT was certificated by this Commission on August 11, 2004, in Case No. XA-2005-0015, to provide competitive, intrastate, interexchange telecommunications services as well as non-switched local telecommunications services limited to dedicated, private lines. Condor, a Minnesota corporation and wholly-owned subsidiary of McDATA, formed solely for the purposes of this transaction, will acquire and merge into CNT, leaving CNT as the surviving subsidiary of

McDATA. CNT will continue to operate after the transaction under its existing Missouri certificate and tariff and its Missouri operations and customers will be unaffected.

McDATA is a publicly-traded Delaware corporation. Neither McDATA nor any of its subsidiaries are engaged in the telecommunications business. McDATA's revenues for the twelve months ending January 31, 2004, were \$418.9 million. Pursuant to the transaction, holders of CNT's stock will receive 1.3 shares of McDATA's Class A Common Stock for each share of CNT, plus cash in lieu of fractional shares. At the close of the transaction, CNT's shareholders will own 24 percent of McDATA.

The Application states that the transaction will have no tax impact on any political subdivision in Missouri and that the companies have no pending or final judgments against them from any state or federal agency that involve customer service or rates. CNT states that it is current on Missouri assessments and fees and in filing its annual reports.

The Commission's Staff filed its Memorandum and Recommendation on March 23, advising the Commission to approve the proposed transaction. Staff notes that CNT is a competitive carrier and that its subscribers will receive notice advising them of their right to seek service from another carrier. The transaction will be transparent to CNT's Missouri customers, who will continue to receive the same service at the same rates and under the same conditions. Thus, Staff is of the opinion that the proposed transaction will not be detrimental to the public interest and should be approved.

The standard for approval of a sale of assets is that the sale will not be detrimental to the public interest.¹ The Commission has reviewed the Application and Staff's Memorandum and Recommendation and finds that the proposed merger will have

¹ State ex rel. Fee Fee Trunk Sewer, Inc. v Litz, 596 S.W. 2d 466, 468 (Mo. App., E.D. 1980).

no adverse impact on the Missouri customers of CNT. The Commission finds that the transaction is not detrimental to the public interest and should be approved.

On Rehearing:

In its original Order of March 29, 2005, the Commission directed CNT to notify its Missouri customers of the change of ownership and control:

That Computer Network Technology Corporation shall notify its Missouri customers of the transaction and advise them of their right to seek service from another carrier. Computer Network Technology Corporation shall provide customer notice in a form acceptable to the Staff of the Missouri Public Service Commission and Staff shall file a pleading in this case stating that this condition has been met.

CNT objected to this condition and timely filed its Application for Rehearing on April 7. On April 12, the Commission's Staff filed its response stating that it has no objection to the removal of the customer notification condition.

In view of Staff's concurrence with CNT, the Commission will grant rehearing and issue a modified order, approving the transaction without the customer notification condition.

IT IS THEREFORE ORDERED:

1. That the Application filed on February 18, 2005, by Computer Network Technology Corporation is approved. Computer Network Technology Corporation is authorized to take any and all lawful actions necessary to carry out the transaction herein authorized.

2. That the Application for Rehearing filed on April 7, 2005, by Computer Network Technology Corporation is granted.

3. That this order shall become effective on April 29, 2005.
4. That this case may be closed on April 30, 2005.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Davis, Chm., Murray, Gaw,
and Appling, CC., concur.
Clayton, C., absent.

Thompson, Deputy Chief Regulatory Law Judge